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THE UNIQUE CHALLENGES TO PROSECUTING DOMESTIC VIOLENCE CASES

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The Unique Challenges to Prosecuting Domestic Violence Cases

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Goals & Objectives



1. Understand the unique Evidentiary & Disclosure issues associated with DV cases
2. Learn more about & protect yourself from the impact working on DV cases can have to your own health & well being
3. Recognize your integral role in a successful trial presentation

What is DV?

Domestic violence is a pattern of behavior that includes the use or threat of violence and intimidation for the purpose of gaining power and control over another person. Violence is characterized by: Physical Abuse, Sexual Abuse, Economic Abuse, Isolation, Emotional Abuse, Control, or Verbal Abuse.

<http://www.azcadv.org>

What is DV under Arizona Law?

- Arizona Revised Statutes § 13-3601. Domestic violence
- "Domestic violence" means any act that is a dangerous crime against children as defined in section 13-705 or an offense prescribed in [the following sections]
 - section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623,
- if any of the following applies:

Relationship Test – 13-3601A

1. The relationship between the victim and the defendant is one of **marriage** or former marriage **or** of persons residing or having resided in the **same household**.
2. The victim and the defendant **have a child** in common.
3. The victim or the defendant is **pregnant** by the other party.
4. The victim is related to the defendant or the defendant's spouse by **blood or** court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-**in-law**, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
5. The victim **is a child** who resides or has resided in the **same household as the defendant** and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.
6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a **romantic or sexual relationship**.

DV Offenses

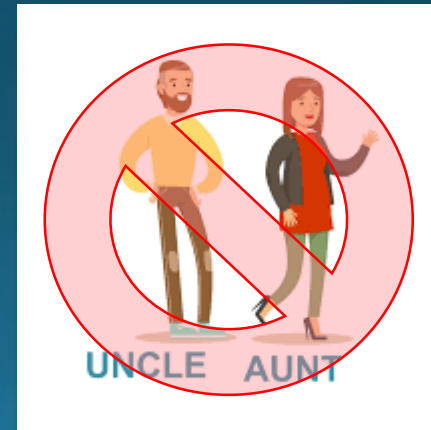
- 13-1102 – Negligent Homicide
- 13-1103 - Manslaughter
- 13-1104 – 2nd Murder
- 13-1105 – 1st Murder
- 13-1201 - Endangerment
- 13-1202 - Threatening/Intimidating
- 13-1203 - Assault
- 13-1204 – Aggravated Assault
- 13-1302 – Custodial Interference
- 13-1303 - Unlawful Imprisonment
- 13-1304 - Kidnapping
- 13-1406 - Sexual Assault
- 13-1502 – Criminal Trespass 3rd
- 13-1503 – Criminal Trespass 2nd
- 13-1504 - Criminal Trespass 1st
- 13-1602 – Criminal Damage
- 13-2810 Interfering Judicial Proceedings
- 13-2904 – Disorderly Conduct (subsection A, paragraph 1, 2, 3 or 6)
- 13-2910 – Cruelty to Animals (subsection A, paragraph 8 or 9)
- 13-2915 – Preventing the Use of the Phone in an Emergency (subsection A, paragraph 3)
- 13-2916 – Use of Electronic communication to terrify, intimidate or harass
- 13-2921 - Harassment
- 13-2921.01 – Aggravated Harassment
- 13-2923 - Stalking
- 13-3019 – Surreptitious pics, videos, etc
- 13-3601.02 – Aggravated DV
- 13-3623 – Child/vulnerable adult abuse

Other things §13-3601 provides...

- (B) – mandatory arrest if injuries, deadly weapon, dangerous instrument
- (C) – Seizure of firearms- 72 hour hold
- (I) – release condition to protect the victim
- (J) – written procedures and resources available for the protection of the victim
- (M) – pregnant victim + 2 years

Not all “Relationships” are DV

- Common misconceptions are that all “romantic” relationships are DV.
 - However this is not always accurate.
 - One night stands may not qualify as DV
 - Must consider factors of relationship
- Common misconceptions are that all “familial” relationships are DV
 - No cousins, aunts, or uncles
 - UNLESS, live together.



The
"domestic"
part doesn't
matter.
Violence is
violence.

Discovery Dilemmas



Cycle of Violence



“Other Acts” Evidence

- Arizona Rules of Evidence, Rule 404(b):

Other crimes, wrongs, or acts. Except as provided in Rule 404(c) evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Examples of “other acts” evidence

- Prior threats
- Prior acts of violence
- Evidence of the cycle of violence
- Animal abuse
- Evidence of manipulation or coercion
- Evidence of controlling past behavior
- Prior violence towards other partners
- Patterns of behavior



Maricopa County Sheriff's Office

Paul Penzone, Sheriff



INCIDENT REPORT

EVENT	Reported Date:	Reported Time:	IR #:	Original/Supp?	Hand Written?	Info Only	Access Level:	Case Status:	MC (Event) #:	
	2/10/2019	20:24	IR19004173	ORIGINAL	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	Open	Submitted	MC19029271	
	Serial #:	S2174	Last Name: PEREZ			Shift Supervisor: S1321		Name: HANSON, R		
	Body Camera Activated?	Yes	Reason not Active:							
INCIDENT	Break in Video?	Yes	Reason for break: no contact with public							
	Radio Code:	242V DV			From Date:	2/10/2019	From Time:	19:46	9-1-1 Tape Requested:	
					To Date:	2/10/2019	To Time:	19:46	No	
	Location:	[REDACTED]			City:	[REDACTED]		ZIP:	[REDACTED]	
								The number of Additional MCSO Personnel On Scene: 0		
	Is this IR related to others? YES									
Related Incident: IR19004139										
Related Incident: IR18012300										
Related Incident: IR18019238										
Related Incident: IR18021277										
Related Incident: IR18024526										
Related Incident: IR18025009										
Related Incident: IR18028001										
Related Incident: IR18029060										
Related Incident: IR18029776										
Related Incident: IR18030506										
Related Incident: IR18030703										
Related Incident: IR18033356										
Related Incident: IR18033941										
Related Incident: IR19002067										

SYNOPSIS

On 02/10/2019 at 1946 hours, [REDACTED] violated a court order by sending [REDACTED] an email outside the parameters set in Order of Protection FC2018-052354.

What About the Victim's Past Acts?

*****PREVIOUS INCIDENTS*****

ON 11/11/2015 REFERENCE 201500002169849, W [REDACTED] WAS ALLEGED TO HAVE PUSHED M [REDACTED] AT THEIR APARTMENT. THIS CASE WAS CLOSED WITH LIMITED INFORMATION FOR PROSECUTION.

ON 01/14/2017 REFERENCE 201700000083307, W [REDACTED] ALLEGED HE WAS ASSAULTED BY G [REDACTED] AND AN UNKNOWN MALE WHERE HE SUFFERED SMALL CUTS ON HIS FACE AND BACK OF HIS HEAD. THIS CASE WAS PENDED FOR SUSPECT CONTACT.

I WAS UNABLE TO LOCATE ANY OTHER INCIDENTS INVOLVING THESE SUBJECTS.

Disclosure Obligations

- Brady
 - Anything potentially exculpatory
 - Prior misdemeanor convictions for dishonesty (Rule of Evidence 609)
 - Prior acts of violence towards the defendant (Rule of Evidence 404)
 - Prior recantations (Rule of Evidence 608)
- Exculpatory
 - Felony convictions
 - Pending felony cases
 - All recorded statements about the offense (recorded = in writing, or audio/video)
 - E.g. text messages, emails, letters, OOP affidavits
- Impeachment
 - Anything that can call a witness's testimony into question must be disclosed

Disclosure Obligations (cont'd)

- Protected Information
 - Psychological records
 - Counseling records
 - School records
 - Financial records
 - Prior unrelated medical records
 - Cell phone/computer content
- Defense counsel must demonstrate exculpatory information
 - If it's not obvious, then the defendant has to show why

ORDERS OF PROTECTION

- Protection Orders are:
 - Civil court orders prohibiting a specific person from making contact with you, such as coming near your home, workplace, school, or other locations as listed in the order.
 - Based on the relationship you have with the party you are seeing protection from.
 - Issued by a judge and must be served by a police officer, deputy sheriff, or process server.
 - Effective for 12 months from service date.

ORDERS OF PROTECTION

- Protection Orders can:
 - Restrain a defendant from committing acts of violence and harassment.
 - Prohibit a defendant from contacting or coming into contact with you.
 - Provide you with legal recourse if the person served with a protective order violates that order.
- Protection Orders cannot:
 - Resolve landlord/tenant disputes.
 - Change custody or visitation orders.
 - Guarantee your safety.

Information from Maricopa County Superior Court website.

ORDERS OF PROTECTION

- No fee to file a Petition for Order of Protection.
- Can be obtained in person at the Maricopa County Superior Court, any justice court, or any city court, regardless of the location of the plaintiff or defendant.
 - No online form—must appear in person before a judge to obtain protective order.
- Can include more than one protected person in the protective order (such as children, relatives, or a babysitter) and multiple protected addresses.
- Defendant has the right to challenge the protective order by requesting one hearing within one year from the date he/she is served with the protective order.

Plaintiff [REDACTED]	Defendant [REDACTED]	Case No. [REDACTED]
Birth Date: [REDACTED]	Address [REDACTED]	PETITION for <input checked="" type="checkbox"/> Order of Protection <input type="checkbox"/> Injunction Against Harassment <input type="checkbox"/> Workplace Injunction
	City, State, ZIP Code [REDACTED]	

4. I need a Court Order because:

Date(s) Describe what happened

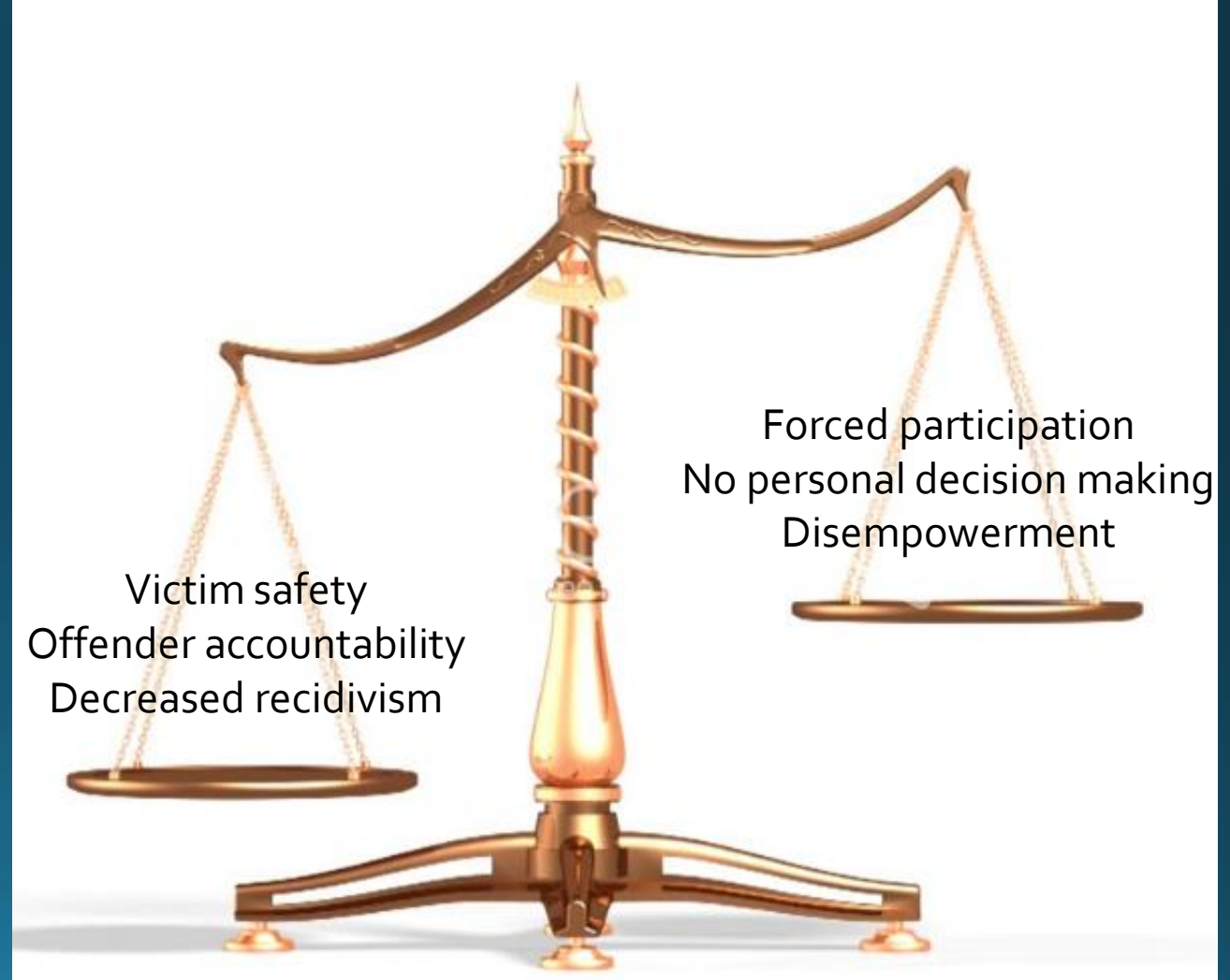
05/21/2012 I received a text message from [REDACTED] with some demeaning content on 05/21/2012. Late Saturday night(05/19/2012), I was out with friends and he tried contacting me by phone(including leaving a couple of messages on my voicemail stating what he is going to do to me), after me not responding he then came to my home where our 18yr. old daughter & 10yr old son and my 14yr. old daughter were home alone. The children contacted me and told me not to come home as he kept knocking on the door, they were afraid and let him inside the home due to him kicking the door in a few months ago.(the police were notified) He sat inside and outside my home until 10 am Sunday morning. As I did not return to the residence, he continued to call and returned to my home on several occasions waiting for me to return. I have been back in Arizona for 10 months after leaving the relationship and within these ten months he has tried to run me and my children off the road. He has physically abused me by hitting me in the face and causing my nose to bleed. In 01/2012, he forced me to go to vital statistics and allow for his name to be added to our son's birth certificate and then broke into my home and removed him and his belongings to his residence. (The police were notified.) He continues to tell me that I cannot and will not be involved with another male as long as I reside in Arizona and for this reason he continues to harrass me and my children.

I am scared for our safety and what will happen to us in the near future. I plan to leave the state of Arizona within the next 2 weeks to prevent from anything further occuring as I feel that he will cause physical and emotional harm to me and my children.

Uncooperative Victims or Witnesses

Generally, a victim or witness' unwillingness to later aid in prosecution does not prevent the State from proceeding with the case.

There are significant public policy concerns supporting “no drop” policies (e.g. MCAO Domestic Violence Protocol).



Recantation

- To recant or “take back” previous claims
- To withdraw or repudiate prior statements or testimony formally and publicly

FORFEITURE BY WRONGDOING

- Declarant (victim) must be unavailable as a witness
- Prosecutor must make a good-faith effort to obtain witness' presence
- Defendant committed an act (some "wrong-doing") designed to prevent the witness from testifying
- The witness did not appear to testify

DV Forfeiture

Through a study published in the Social Science & Medicine Journal about the interpersonal processes associated with victim recantation, the authors found that there were three main ways abusers induced victims to recant:

1. Minimization of the Abuse Event
2. Appeals to the Victim's Sympathy
3. Invocation of Images of Their Life Together/Life Without Each Other

(see Honeymoon Phase of Cycle of violence)

"Meet me at the hill where we used to park": Interpersonal processes associated with victim recantation

Social Science & Medicine Journal, Vol. 73, 1054-1061. A. Bonomi, R. Gangamma, C. Locke, H. Katafiasz, & D. Martin

The Jail Call:





Jail Call #1: Plead the 5th, you don't remember



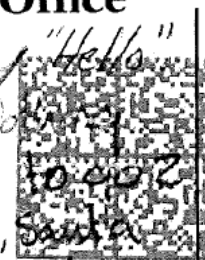
Jail Call #2: Just want us to be together



Jail Call #3: Fantasy of them together

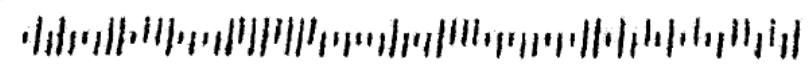
12.25.14
Maricopa County Sheriff's Office
Mom, Just a few words to say "Hello"
Hope all is well. Miss the kids...
new on my end, just waiting to go to
trail. Hopefully by 2.19.15, Sad, Santa
overlooked me again, no postcards or
visit, in All I ask is for my family to
forgive and "NOT" come to trail
to cook my goose. Well thats about
it. Another year coming hopefully
I can find a in-house Rehab to
go to ones I out, I will get out
if qing dont go to court. Only time
will tell, hope you and all have
a great new
year!
Joseph

Front: Convicted inmates, male and female, are housed in Tent City, an outdoor canvas compound



UNITED STATES POSTAGE
02 1M
0004280086
MAILED FROM ZIP CODE 85003
\$ 00.34⁰
DEC 30 2014

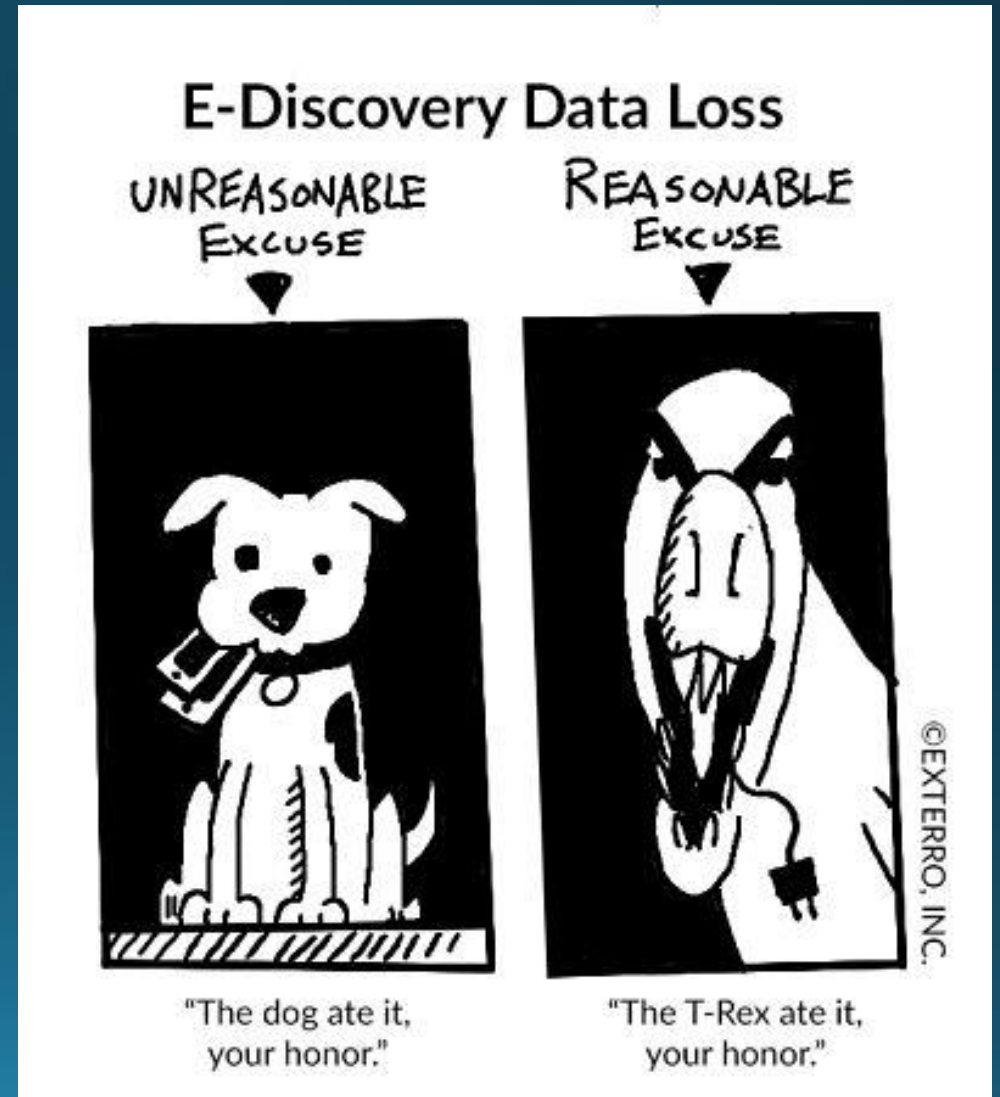
Mom



000112

Redaction Issues

- ❖ Body Worn Cameras
- ❖ Recorded Interviews
- ❖ Medical Records

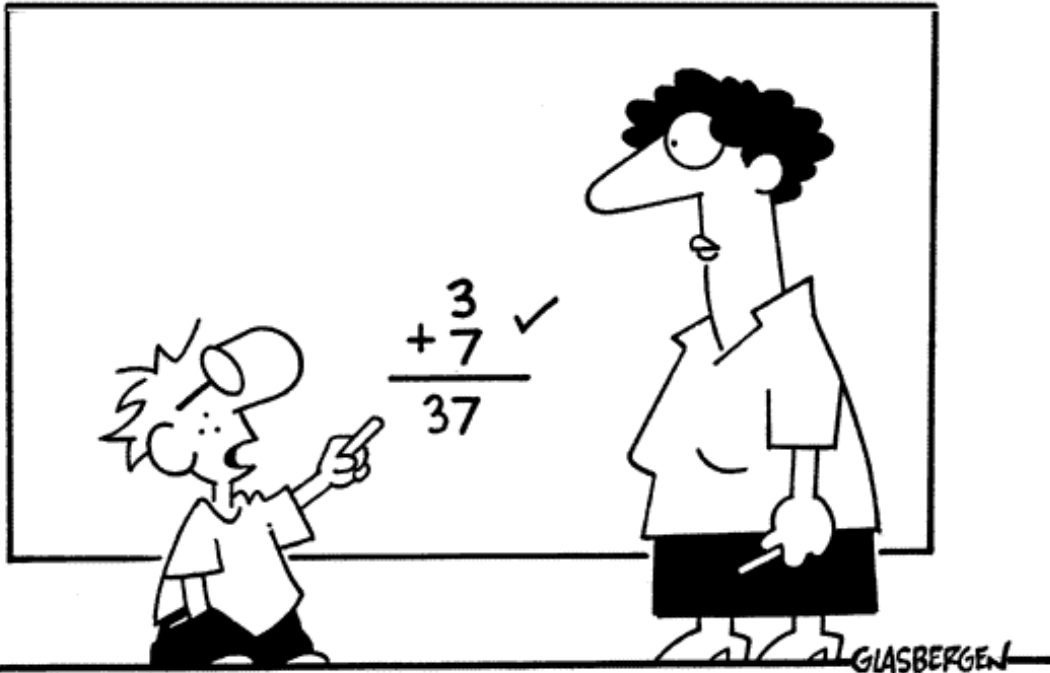


Child & Vulnerable Adult Abuse

- Find the documents
 - Medical records
 - Offsite providers/outpatient records
 - Prior medical records
 - Scans/x-rays/imaging
 - Common forms not included in records (e.g. brain death checklist)
 - School records
 - School nurse records
 - Behavioral citations
 - Registry of parents
 - Attendance logs
 - Caretaker records
 - Schedules/contracts
 - Patient complaints
 - Caretaker employee files
 - Financial records
 - Bank accounts
 - Utility bills
 - Wills/trusts
 - Receipts

Constantly need to be thinking outside of the box

Copyright 2002 by Randy Glasbergen. www.glasbergen.com



"In the corporate world they pay you big bucks for thinking outside of the box!"



Baldwin



CARTOONSTOCK
.com

Search ID: mban800

“My husband is a very large, loud and obnoxious man. OK, sure, I tried to hire a hit man. But just to hit him.”

Protect Your Own Health



VICARIOUS TRAUMA

- Vicarious trauma, also referred to as compassion fatigue or secondary traumatic stress, refers to the negative reactions that can occur when professionals repeatedly witness or hear about victims' difficult experiences of trauma, violence, and abuse.
- Signs resemble post-traumatic stress disorder, and can include emotional, behavioral, and physical symptoms, such as anxiety, depression, disturbed sleep, change in appetite, irritability, nightmares, loss of empathy, and numbness.

Signs and Symptoms

- Having difficulty talking about feelings
- Free floating anger and/or irritation
- Startle effect/being jumpy
- Over-eating or under-eating
- Difficulty falling asleep and/or staying asleep
- Worry that you are not doing enough
- Dreaming about the traumatic experiences
- Diminished joy towards things you used to enjoy
- Feeling trapped by your work
- Diminished feelings of satisfaction and personal accomplishment
- Dealing with intrusive thoughts of the trauma
- Feeling of hopelessness associated with your work
- Blaming others

Effect on Job Performance

- Low motivation
- Increased errors
- Decreased quality
- Avoidance of job responsibilities
- Over-involved in job/perfectionism
- Lack of flexibility



Minimize the Risk of Vicarious Trauma

- Develop self-care and stress management strategies i.e. exercise, build a strong social or community network, practice relaxation techniques, make time for extracurricular activities
- Establish formal support structures and safe spaces at work
 - Peer Support
 - Discuss with supervisor
 - Discuss with team
- Talk with a mental health professional
- Establish professional boundaries
- Participate in capacity-building and training

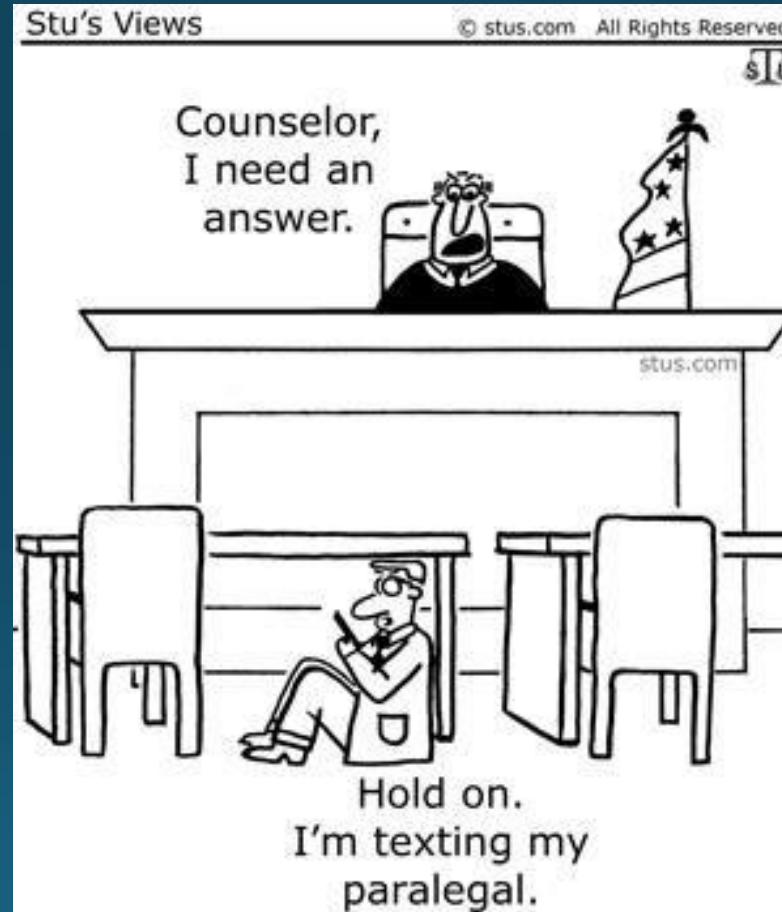
Tips from the U.S. Department of State



Dealing with Angry/Hostile Victims

- Empathy
 - Understand that they are caught in the cycle
- Patience
 - Sometimes they just want to vent or be heard
 - Don't take it personally
- Tolerance
 - Listen, but don't let them abuse you
 - Use your attorney as a buffer if it goes too far
- Memorialize
 - Note the time, date, and substance of the interaction (it could be helpful later)

Integral Part of Trial Team



LAST MINUTE REDACTIONS

❖ Based on rulings in the case or even whether a victim appears, there can be numerous last minute redactions urgently needed.

Interview w/ Off. Carrasco	
Time (Approx.)	Statements (Paraphrased)
4:23-4:27	"cuz he wouldn't do it closed hand cuz he knows I bruise easily. See page 2 of transcript
8:28-31	"am I gonna be safe, we will do our best to keep you safe, cuz I know he has..." See page 5 of transcript
8:31-8:44	Right now you are saying you don't want to prosecute is because you are in fear. See page 6 of transcript
8:44-8:55	She is going to give us the key with consent to go in
8:55- 9:15	"hello, dada, keep your car on I'm staying with you.
9:15-16:34	Audio is off while officer looks for documents in car so there is no need for this to play to the jury
16:34-18:41:	Conversation on phone with Mr. Cherry: "we need to speak to you about what occurred, okay so you're not going to come out and talk to us, well it's going to be in your best interest to come to the door with your hands up so we know you don't have any weapons, I need you to come to front door and open door and talk to officer because we have some questions...etc...there are some marks on her that are questionable..."
18:41-20:08	Victim's conversation with Sgt Hale (officer not being called)
20:08-20:45	He's refusing (officers talking)
21:20-23:06	Cassius talking to officers on phone (one of officers is not being called)
23:06-28:26	Silent
28:41-28:54	Conversation about anything damaged in the home
30:00-30:18	Did he open the door. Yea he came out and has been placed in cuffs
31:21-40:52	Silence and officer driving
40:52-41:02	"Has he ever threatened to kill you. Yes"
41:02-41:44	Kids walk in and are talking and officer talks to kids
41:44-44:19	Silence with kids on camera and toys, etc.
Need to keep audio but black out that he is filling out form during 44:19-45:50...is there a way to do that?	
45:50-to end	Kids and family around

ADMITTING PRIOR STATEMENTS

- Arizona Rule of Evidence, Rule 803(4): exception to hearsay to allow prior statements made for and reasonably pertinent to medical diagnosis or treatment.
 - *State v. Robinson*: this can include the perpetrator's identification
- Arizona Rule of Evidence, Rules 801 & 806: prior consistent/inconsistent statements may be admitted to attack/rehabilitate credibility
- Arizona Rules of Evidence, Rule 803(5): prior recorded statements may be admitted
 - *State v. King*: prior statements admissible if "feigned memory loss"

Victim Location

- Vanishing before trial
 - Investigators
 - Advocates
 - Family members
 - Case agents
 - Neighborhood enforcement teams
- Probation/parole officers
- Jail calls/video visits/jail mail
- Social media
- Shelters

Expert Witnesses

- Finding the right one
- Establishing an agreement
- Sending the appropriate evidence
- Setting up travel
- Scheduling interviews
- Paying their bill
- Keeping them on schedule





Questions?

